

Hon. Richard A. Jones

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NOEL NIGHTINGALE,

and

The National Federation of the Blind, Inc.,

Plaintiffs,

v.

SEATTLE SCHOOL DISTRICT NO. 1, d/b/a  
Seattle Public Schools,

Defendant.

No. C14-1286 RAJ

AMENDED COMPLAINT

Plaintiffs Noel Nightingale (“Ms. Nightingale”) and the National Federation of the Blind (“NFB”), by and through undersigned counsel, file this amended complaint against Defendant Seattle School District No. 1, doing business as Seattle Public Schools (“SPS”), for denying them equal access to SPS’s programs and activities in violation of federal law. They allege as follows:

**I. INTRODUCTION**

1. Plaintiff Noel Nightingale is mother to three children enrolled in SPS institutions. She is blind and a member of the NFB. She brings this action because SPS has denied her an opportunity equal to that afforded sighted parents to informational materials and educational technology and, as a result, has denied her the opportunity to participate in her children’s

1 education. That denial has stemmed from SPS's selection of software programs and its creation  
2 and maintenance of a website that exclude Ms. Nightingale from integrated access.

3 2. The NFB brings this action on behalf of its members, both blind students and  
4 parents, who SPS has denied an opportunity equal to that afforded sighted persons to  
5 informational materials and technology and thus to participate in their, or their children's,  
6 education.

## 7 **II. JURISDICTION AND VENUE**

8 3. This is an action for declaratory and injunctive relief, and damages, brought  
9 pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 and the Americans  
10 with Disabilities Act, 42 U.S.C. §§ 12101, *et seq.* This Court has subject matter jurisdiction over  
11 this action pursuant to 28 U.S.C. §§ 1331 and 1343.

12 4. Venue in this Court is proper pursuant to 28 U.S.C. §1391(b) because Defendant  
13 does business in this district, the acts constituting violations of the ADA and Section 504  
14 occurred in this district, and Ms. Nightingale resides in this district.

## 15 **III. THE PARTIES**

16 5. Plaintiff Noel Nightingale is mother to three children: L.P. is fourteen and in the  
17 ninth grade, C.P. is eleven and in the sixth grade, and D.P. is nine and in the fourth grade. All  
18 three children attend schools within the SPS system. Her children have attended schools within  
19 the SPS system since 2005. For the 2014-2015 school year, D.P. attends John Muir Elementary  
20 School, C.P. attends Washington Middle School, and L.P. attends Garfield High School.  
21 However, during the time period referred to in this complaint, D.P. and C.P. attended John Muir  
22 Elementary School, and L.P. attended Washington Middle School.

23 6. Ms. Nightingale is blind. Her primary method of accessing digital information is  
24 to use software that expresses digital text as synthesized speech. To do so, she uses a common  
25 screen access software known as Job Access with Speech ("JAWS"). This software also enables  
26 Ms. Nightingale to use keyboard commands to easily navigate text, to change the speed of  
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1 speech to enhance her comprehension, and to receive audible cues concerning paragraphing,  
2 punctuation, and other organizational information. In short, JAWS allows Ms. Nightingale to  
3 access textual digital content with the same independence and cognitive features available to  
4 sighted individuals through visual reading.

5         7. The National Federation of the Blind, the oldest and largest national organization  
6 of blind persons, is a 501(c)(3) non-profit corporation duly organized under the laws of the  
7 District of Columbia and headquartered in Baltimore, Maryland. It has affiliates in all 50 states,  
8 Washington, D.C., and Puerto Rico. The NFB and its affiliates are widely recognized by the  
9 public, Congress, executive agencies of state and federal governments, and the courts as a  
10 collective and representative voice on behalf of blind Americans and their families. The  
11 organization promotes the general welfare of the blind by assisting the blind in their efforts to  
12 integrate themselves into society on terms of equality and by removing barriers that result in the  
13 denial of opportunity to blind persons in virtually every sphere of life, including education,  
14 employment, family and community life, transportation, and recreation. Its membership includes  
15 blind parents of children enrolled in Seattle public schools and parents of blind children enrolled  
16 in Seattle public schools.

17         8. The ultimate purpose of the National Federation of the Blind is the complete  
18 integration of the blind into society on a basis of equality. This objective includes the removal of  
19 legal, economic, and social discrimination. As part of its mission and to achieve these goals, the  
20 NFB actively pursues litigation to ensure that the blind receive equal access to the opportunities,  
21 facilities, services, programs, and activities offered by school systems, educational agencies, and  
22 institutions of higher education.

23         9. Ms. Nightingale is a member of the NFB.

24         10. Defendant SPS is the local educational agency and therefore is a public entity  
25 under Title II of the ADA, 42 U.S.C. § 12131, *et. seq.*  
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1           11.     SPS is the largest K-12 school system in Washington state, serving more than  
2 49,870 students in 95 schools.

3           12.     As a public school district, SPS receives federal financial assistance, which  
4 accounts for ten percent of its resources and funds programs such as Title I and Head Start.  
5 Consequently, SPS is required to comply with Section 504 of the Rehabilitation Act of 1973, 29  
6 U.S.C. § 794.

#### 7                               **IV.     STATEMENT OF FACTS**

##### 8                               **Use of the Internet and Technology by the Blind**

9           13.     For sighted and blind persons, the Internet is a significant source of information  
10 and education, a place for everyday activities such as shopping and research, and a means for  
11 keeping informed. The Internet offers a wealth of information, services, and products with  
12 instant availability and without the need to travel to obtain this information.

13           14.     In the educational context, schools and school districts use the Internet to keep  
14 parents and the public informed of their activities and happenings, as well as to provide general  
15 information about their curriculum, programs, and activities. Many school districts maintain a  
16 website for these purposes.

17           15.     School districts also often use various computer software programs within the  
18 classroom as part of their curriculum. The students use these programs to learn lessons and  
19 master concepts in subjects such as math and reading.

20           16.     The blind access the Internet and computer software programs from personal  
21 computers by using keyboards in conjunction with screen access software, or screen readers,  
22 which vocalizes visual information on a computer screen or displays the content on a refreshable  
23 Braille display. Such screen readers provide the only method by which all blind persons can  
24 independently access computerized digital information. Unless Internet applications and  
25 software programs are designed to allow for use with screen readers, blind persons are unable to  
26 meaningfully access all the information, programs, and services they offer.  
27

18. When digital textual content is properly formatted, it is universally available to the sighted and blind alike and does not require the re-creation of text in a separate format. Unlike printed content, digital content is not inherently visual (or audible or tactile), and so must be converted to be accessible to any or all of those senses. Thus, for example, this Complaint is in a PDF format that without modification can be read both by those with sight using their eyes and by blind persons using screen readers.

## SPS Website

21. The Website makes it possible for parents to efficiently and conveniently obtain information about the happenings of SPS and perform tasks relating to their children's education.

1 For example, the Website provides access to forms to enroll a child in school, change a child's  
2 address, or apply for a school choice. As such, the Website provides unique benefits and  
3 services.

4 22. Because the Website is not designed and programmed to be accessed nonvisually  
5 using screen readers, blind students and parents attempting to use the Website, including Ms.  
6 Nightingale, are unable to independently navigate and access all of the same information, enjoy  
7 all of the same benefits and services, and engage in all of the functions available to sighted  
8 students and parents. Vision is required to successfully use the SPS Website.

9 23. The Website contains barriers that prevent full and equal use by blind persons,  
10 including Ms. Nightingale, who use keyboards together with screen access software. These  
11 barriers are pervasive and include: the lack of alt-tags or text on graphics, unlabeled or  
12 mislabeled buttons, unlabeled or mislabeled headings, unlabeled or mislabeled fields, unlabeled  
13 or mislabeled text boxes and areas, unlabeled or mislabeled lists, links that cannot be activated,  
14 and other information, controls, and elements that are not detectable by screen access software.  
15 These barriers violate WCAG 2.0 AA.

16 24. For example, the links across the top of the Website for "Schools", "Students",  
17 "Family and Communities", and "District" can only be activated by clicking the link where it  
18 visually appears with a mouse, an option not available to a blind computer user, rather than also  
19 being susceptible to being activated with a keyboard command. As these lists appear to be the  
20 primary way to access the majority of content on the Website, these are especially egregious  
21 accessibility barriers.

22 25. From 2005 to 2012, Ms. Nightingale accessed the Website without significant  
23 difficulty.

24 26. Beginning in July 2012, however, Ms. Nightingale was unable to access the  
25 information she sought because the Website presented new significant access barriers.  
26  
27

1           27.     In July 2012, Ms. Nightingale emailed the Webmaster and explained that she was  
2 no longer able to access the Website with her screen reader. In November 2012, the Webmaster  
3 informed her that SPS could not remedy the accessibility issues on its own, but was working  
4 with the vendor to correct the situation and achieve ADA compliance.

5           28.     SPS did not correct the situation, so Ms. Nightingale contacted SPS again,  
6 repeatedly requesting that it remedy the deficiencies in the Website. But despite Ms.  
7 Nightingale's persistent and regular inquiry and requests regarding the state of the Website,  
8 SPS's Website remains inaccessible. A report of user and automated testing of barriers on the  
9 Website, begun July 31, 2014, describes barriers that prevent Ms. Nightingale from accessing,  
10 with substantially equivalent ease of use, all of the same information and engaging in all of the  
11 same transactions on the Website as are available to sighted users and is attached hereto as  
12 Exhibit A and incorporated into the Complaint as if alleged herein.

13           29.     Common technology and methods exist for SPS to make the Website accessible to  
14 the blind. Various school districts, both larger and smaller than SPS, have used such technology  
15 and methods to make their websites accessible to the blind.

16           30.     The Website thus contains barriers that deny full and equal access to blind  
17 parents, including NFB members such as Ms. Nightingale, who would otherwise use the Website  
18 to be a fully engaged and active parent and to blind students who would otherwise use the  
19 Website to enjoy equal access to SPS's programs and activities.

### 20                               **ST Math**

21           31.     In the 2013-2014 school year, SPS required that Ms. Nightingale's son, C.P., and  
22 his classmates use a software program, ST Math, to complete math assignments. The students  
23 used ST Math both in class and at home.

24           32.     Midway through the school year, C.P.'s teacher contacted Ms. Nightingale and  
25 told her that C.P. had fallen behind on his assignments in ST Math. The teacher informed Ms.  
26 Nightingale that ST Math featured a graph showing how much work the student had completed,  
27

1 and that the graph showed that C.P. had completed less than half of the work expected of him  
2 and done by most of his classmates.

3 33. Ms. Nightingale attempted to log into ST Math, but was unable to do so because  
4 ST Math was not designed to be compatible with screen reading software and is completely  
5 inaccessible to the blind, including Ms. Nightingale. Even when C.P. logged into the software,  
6 Ms. Nightingale was unable to view his assignments or the graph tracking his progress.

7 34. ST Math contains barriers that prevent full and equal use by Ms. Nightingale and  
8 other blind persons who use keyboards and screen readers. These barriers are pervasive and  
9 include: the lack of keyboard access, inaccessible text content, lack of alt-tags or text on  
10 graphics, unlabeled buttons, and other information, controls, and elements that are not detectable  
11 by screen access software.

12 35. SPS's acquisition and use of ST Math demonstrates a flaw in SPS's procurement  
13 process and thus a foreseeable risk that, in the absence of injunctive relief, SPS will acquire  
14 additional inaccessible software.

15 36. It was and is entirely feasible, and affordable, for school districts to license  
16 educational software that conveys math digitally in an accessible format such as MathML, thus  
17 making math available to sighted and blind parents and students alike.

18 37. Consequently, Ms. Nightingale was completely unable to monitor C.P.'s progress  
19 or assist him with his homework and has suffered damages as a result.

20 **COUNT I**  
21 **Violations of Title II of the Americans with Disabilities Act**  
22 **U.S.C. § 12131 et seq.**

23 38. Plaintiffs incorporate the allegations the preceding paragraphs, as if alleged  
24 herein.

25 39. The Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*,  
26 guarantees equal access for qualified individuals to the benefits of the services, programs, or  
27 activities of a public entity. 42 U.S.C. § 12132 *et seq.*



1           40. Title II of the ADA mandates, *inter alia*, that “no qualified individual with a  
2 disability shall, by reason of such disability, be excluded from participation in or be denied the  
3 benefits of the services, programs, or activities of a public entity, or be subjected to  
4 discrimination by any such entity.” 42 U.S.C. § 12132.

5           41. Furthermore, a “public entity shall take appropriate steps to ensure that  
6 communications with applicants, participants, members of the public, and companions with  
7 disabilities are as effective as communications with others.” 28 C.F.R. § 35.160(a)(1). A  
8 “‘companion’ means a family member, friend, or associate of an individual seeking access to a  
9 service, program, or activity of a public entity, who, along with such individual, is an appropriate  
10 person with whom the public entity should communicate.” *Id.* § 35.160(a)(2).

11           42. Such public entities “shall furnish appropriate auxiliary aids and services where  
12 necessary to afford individuals with disabilities, including applicants, participants, companions,  
13 and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a  
14 service, program, or activity of a public entity.” *Id.* § 35.160(b)(1).

15           43. SPS is the local educational agency and thus is a public entity under Title II of the  
16 ADA.

17           44. The SPS Website and curriculum are services, programs or activities provided by  
18 SPS.

19           45. Ms. Nightingale is an individual and companion with a disability: as a family  
20 member of her three children enrolled in SPS schools, she is an appropriate person with whom  
21 SPS should communicate. Such communication with Ms. Nightingale is necessary to serve the  
22 interests of her children, who are participating in SPS’s services, programs, and activities.

23           46. SPS has failed and is failing to meet its obligations to communicate effectively  
24 with blind parents, including Ms. Nightingale, as well as to blind SPS students. Consequently,  
25 SPS is denying NFB members, including Ms. Nightingale, the opportunity to participate in their  
26 children’s education—an opportunity provided to parents without disabilities—and to blind  
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1 students whose parents are NFB members, an equal opportunity for those students to enjoy the  
2 benefits of SPS's program and activities. Because this denial prevents both the children of blind  
3 parents and blind children from fully participating in SPS's services, programs, or activities, SPS  
4 must assure effective communication with Ms. Nightingale and other disabled parents, as well as  
5 with blind children enrolled in SPS.

6 47. SPS's actions constitute discrimination on the basis of a disability in violation of  
7 the ADA, in that SPS: (1) has failed to maintain policies and procedures to ensure compliance  
8 with Title II, specifically policies that provide equal access and effective communication to  
9 individuals and companions with disabilities; (2) has failed to ensure that communications with  
10 NFB members, including Ms. Nightingale, were as effective as communications with non-  
11 disabled companions, including other parents; (3) has failed to provide auxiliary aids and  
12 services or to modify policies and procedures to prevent discrimination; (4) has failed to provide  
13 reasonable modifications of policies, practices, and procedures; (5) has purchased and deployed  
14 new equipment and software that is inaccessible to NFB members, including Ms. Nightingale,  
15 after the effective date of the ADA; and (6) has failed to provide educational information in a  
16 manner that is timely, equally effective and equally integrated.

17 48. As a result of SPS's actions, NFB members, including Ms. Nightingale, have  
18 suffered and continue to suffer irreparable harm: they have suffered and continue to suffer from  
19 discrimination and unequal access to SPS's programs and activities, as well as the inability to  
20 obtain information about and assist their children, who are participating in SPS's services,  
21 programs and activities.

22 49. NFB members, including Ms. Nightingale, have been and continue to be denied  
23 full access to the information intended to be communicated to parents of children enrolled in SPS  
24 schools and to blind children enrolled in SPS schools.

25 50. The actions by SPS also were done intentionally or with deliberate indifference to  
26 the protected rights of Ms. Nightingale, thus entitling her to damages.  
27

**COUNT II**  
**Violations of § 504 of the Rehabilitation Act of 1973**  
**29 U.S.C. § 794 *et seq.***

51. Plaintiffs incorporate by reference all allegations contained in the preceding paragraphs, as if alleged herein.

52. Section 504 of the Rehabilitation Act mandates that “[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a).

53. Section 504 defines “program or activity,” in pertinent part, as “all of the operations of a department, agency, special purpose district, or other instrumentality of a State or of a local government; or the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government . . . .” *Id.* § 794(b)(1).

54. Such federally funded programs and activities must provide aids and services that “afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person’s needs.” 34 C.F.R. § 104.4(b)(2).

55. SPS receives federal financial assistance, thereby subjecting itself to the requirements of Section 504.

56. Ms. Nightingale is blind and a parent of students at SPS institutions. She is therefore a qualified individual with a disability under Section 504.

57. SPS has, solely by reason of her disability, excluded Ms. Nightingale and other NFB members from participation in, denied them the benefits of, and otherwise discriminated against them in its facilities, services, programs or activities. SPS’s violation of Section 504 and its regulations has denied and continues to deny NFB members, including Ms. Nightingale, an equal opportunity to access the educational information SPS offers to non-disabled parents.

1           58.     SPS's actions constitute discrimination on the basis of a disability in violation of  
2 the Section, in that SPS: (1) has failed to maintain policies and procedures to ensure compliance  
3 with Section 504, specifically policies that provide equal access and effective communication to  
4 individuals with disabilities; (2) has failed to ensure that communications with NFB members,  
5 including Ms. Nightingale, were as effective as communications with non-disabled parents and  
6 students; (3) has failed to provide auxiliary aids and services or to modify policies and  
7 procedures to prevent discrimination; (4) has failed to provide reasonable modifications of  
8 policies, practices, and procedures; (5) has purchased and deployed new equipment and software  
9 that is inaccessible to NFB members, including Ms. Nightingale, after the effective date of  
10 Section 504; (6) has failed to provide educational information in a manner that is timely, equally  
11 effective and equally integrated; and (7) has otherwise discriminated against NFB members,  
12 including Ms. Nightingale.

13           59.     As a result of SPS's actions, NFB members, including Ms. Nightingale, have  
14 suffered irreparable harm: they have suffered and continue to suffer from discrimination and  
15 unequal access to SPS's programs and activities, as well as the inability of blind students to  
16 obtain information and of blind parents to obtain information about and assist their children, who  
17 are participating in SPS's services, programs and activities.

18           60.     The actions by SPS also were done intentionally or with deliberate indifference to  
19 the protected rights of Ms. Nightingale, and thus entitle her to damages.

#### 20                           **CLAIMS FOR RELIEF**

21           61.     WHEREFORE, Plaintiffs Ms. Nightingale and the NFB request judgment against  
22 the Defendant as follows:

- 23
- 24                   (a)     A preliminary and permanent injunction prohibiting Defendant from  
25                           violating Title II of the ADA and the Rehabilitation Act;  
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- (b) A declaration that Defendants have and continue to violate Title II of the ADA and the Rehabilitation Act;
- (c) An order directing SPS to adopt procurement processes that will prevent the acquisition of inaccessible software;
- (d) An award to Plaintiffs of reasonable attorneys' fees and costs; and
- (e) The right to conform the pleadings to the evidence presented at trial; and
- (f) An award of such other and further relief as the Court may deem just.

62. In addition to the above, Plaintiff Ms. Nightingale demands judgment against the Defendants as follows:

- (a) An award of Ms. Nightingale's compensatory damages.

DATED this 2<sup>nd</sup> day of December, 2014.

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